

SPECIAL CIVIL APPLICATION No 3178 of 1995
with
SPECIAL CIVIL APPLICATION NO. 3179 OF 1995
with
SPECIAL CIVIL APPLICATION NO. 3180 OF 1995
with
SPECIAL CIVIL APPLICATION NO. 3181 of 1995
with
SPECIAL CIVIL APPLICATION NO. 3201 OF 1995

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

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5. Whether it is to be circulated to the Civil Judge?
No

DIVYAKANT NAVNITLAL SHETH & ORS

Versus

ADDL COLLECTOR AND COMPETENT AUTHORITY & ANR.

Appearance:

Kum. V.P. Shah, Advocate, for the Petitioners
(in all matters)
Shri A.G. Uraizee, Assistant Government Pleader,
for the Respondents (in all matters)

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 19/09/96

ORAL JUDGEMENT

The common order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) on 22nd October 1993 under sec. 8(4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.2 herein) in five different appeals on 19th December 1994 is under challenge in all these five petitions. Common questions of law and fact are found arising in all these petitions. I have therefore thought it fit to dispose of all these petitions by this common judgment of mine.

2. The facts giving rise to all these petitions move in a narrow compass. These five petitions are filed by five brothers. They filed their separate declarations in the prescribed form under sec. 6(1) of the Act with respect to their respective holding within the urban agglomeration of Ahmedabad. Their form was duly processed by respondent No. 1. After observing necessary formalities under sec. 8 of the Act, by his common order passed on 22nd October 1993 under sub-section (4) thereof, respondent No.1 declared the holding of some petitioners to be in excess of the ceiling limit as specified in the order. Its copy is at Annexure M to each petition. Each petitioner carried the

matter in appeal before respondent No. 2 under sec. 33 of the Act. All the five appeals were heard together. By the common appellate order passed on 19th December 1994 in the aforesaid five appeals, respondent No. 2 dismissed all the appeals. Its copy is at Annexure N to each petition. Each petitioner was aggrieved thereby. He has therefore approached this Court by means of each of these five petitions under art. 226 of the Constitution of India for questioning the correctness of the common order at Annexure M to each petition as affirmed in appeal by the common appellate order at Annexure N to each petition.

3. Kum. Shah for the petitioners is right in her submission that the constructed area will have to be excluded from the holding of each petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567. It appears that certain constructed properties were included in the holding of each petitioner to the extent of each one's share therein.

4. The grievance voiced by and on behalf of the petitioners is with respect to one property bearing Census Nos. 1769 to 1785 situated in Shahpur Ward No. 2 within the urban agglomeration of Ahmedabad. It is the case of the petitioners that it was a constructed property. It appears that the petitioners could not produce before respondent No. 1 as to what exact area of construction existed on the date of coming into force of the Act. The petitioners have produced before this Court the relevant material in that regard. I am told that it was produced before respondent No. 1 also. It appears not to have been properly appreciated.

5. There is another grievance voiced by and on behalf of the petitioners to the effect that certain properties are held to be properties belonging to the petitioners as an association of persons though they are merely co-owners thereof. As rightly submitted by Kum. Shah for the petitioners, co-owners cannot be treated as an association of persons in view of the binding Division Bench ruling of this Court in the case of Chhaganlal Trikamdas Thakker and others v. Competent Authority, Rajkot and others reported in 1994(1) Gujarat Current Decisions 1. The contrary view taken by respondent No.1 as affirmed in appeal by respondent No.2 cannot therefore be sustained in law.

6. It was the case of the petitioners in each

petition that some area of the lands bearing survey Nos. 39 and 40 situated at village Acher was lost in reconstitution on implementation of one Town Planning Scheme in that area. It appears that respondent No.1 has not considered this case only on the ground that no material is brought on record in that regard. The petitioners have brought on record of each of these petitions certain documents showing loss of some area from the disputed parcels of land in reconstitution of plots on account of implementation of the concerned town planning scheme in that area. It has been urged that this material was on the record of respondent No.1 as in the earlier occasion it was taken into consideration. If that be so, respondent No. 1 seems not to have applied his mind to such material. His impugned order cannot therefore be sustained in law on that ground also.

7. The bone of contention voiced by learned Advocate Kum. Shah for the petitioners in each petition is also to the effect that in case of two brothers their holding is included in the holding of one brother only on the ground of execution of their respective power of attorney in favour of the brother in whose share their holding is included. The petitioners whose shares are included in the holding of the power of attorney-holder are the petitioners in Special Civil Applications Nos. 3180 and 3181 of 1995. Their holding is included in the holding of the petitioner in Special Civil Application No. 3178 of 1995 because they executed their respective power of attorney in his favour. The reason for inclusion of their shares in his holding was that the power of attorney in each case was irrevocable.

8. A copy of the power of attorney is at Annexure-0 to the aforesaid three petitions. It transpires therefrom that it is a general power of attorney. Such power of attorney was executed in favour of one brother as the other two brothers had gone abroad for their further studies. It transpires from the terms of the power of attorney at Annexure-0 to the aforesaid three petitions that no interest whatsoever in the power of attorney-holder has been created thereby or thereunder. It is a settled principle of law that when power is assigned coupled with interest created in the power of attorney-holder, it would constitute an irrevocable power of attorney. Such power of attorney cannot be terminated in view of sec. 202 of the Indian Contract Act, 1872.

9. I am fortified in my view by the binding ruling of the Supreme Court in the case of Seth Loon Karan Sethiya v. Ivan E. John and others reported in AIR 1969

SC 73. In that case, the power of attorney was found to be coupled with interest created in favour of the power of attorney-holder. In the context of sec. 202 of the Indian Contract Act, 1872, the Supreme Court held such power to be an irrevocable power of attorney. That ruling has been followed by the Andhra Pradesh High Court in its ruling in the case of M. John Kotaiah v. A. Divakar and others reported in AIR 1985 Andhra Pradesh 30. It has again been followed by the Karnataka High Court in its ruling in the case of Corporation Bank, Bangalore v. Lalitha H. Holla and others reported in AIR 1994 Karnataka 133. In the case before the Karnataka High Court the power of attorney was styled as an irrevocable power of attorney. On analysis of various clauses thereof, the Karnataka High Court came to the conclusion that it was not an irrevocable power of attorney as it was not coupled with any interest in favour of the power of attorney-holder. It has been held therein:

Mere use of word 'irrevocable' in a Power of Attorney will not make the Power of Attorney 'irrevocable' unless the terms thereof disclose that it created or recognised an agency coupled with interest in favour of the Agent. A Power of Attorney simpliciter which merely authorised an agent to do certain acts in the name of or on behalf of the executant can be revoked or cancelled by the executant at any time in spite of the instrument stating that the Power of Attorney is irrevocable. On the other hand, a Power of Attorney executed in favour of an Agent, recording or recognising an interest of the Agent/Attorney in the property which is the subject matter of the Agency, cannot be revoked or terminated, even if the instrument does not state specifically that it is irrevocable, as they it would be a power coupled with an interest.

I am bound by the aforesaid ruling of the Supreme Court and I am in agreement with the principle of law stated in the aforesaid ruling of the Karnataka High Court.

10. The aforesaid rulings are on all fours applicable in the present case. As pointed out hereinabove, it transpires from the power of attorney at Annexure-0 to the aforesaid three petitions that no interest whatsoever has been created in favour of the power of attorney-holder. The power of attorney holder has been required to manage the properties of the assignor of the

power on behalf of the latter. No consideration is stated in it obviously because it was executed in favour of his own brother. It transpires from various clauses that the power of attorney-holder was to manage the properties of the grantor of the power practically as his trustee. In that view of the matter, there is no hesitation in coming to the conclusion that it was not an irrevocable power of attorney. If that be so, the holding of the grantor of the power of attorney could not be included in the holding of the power of attorney-holder. The contrary conclusion reached by respondent No.1 in his impugned order at Annexure M to each petition as affirmed in appeal by the appellate order at Annexure N to each petition in that regard cannot be sustained in law.

11. In view of my aforesaid discussion, I am of the opinion that the impugned common order at Annexure M to each petition as affirmed in appeal by the common appellate order at Annexure N to each petition cannot be sustained in law. It has to be quashed and set aside. The matter will have to be remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. It will be open to the petitioners in each petition to bring to the notice of respondent No.1 the fact that some area from one parcel of land bearing survey No. 136 situated at Hansol has been lost in carving out a road in the concerned town planning scheme. It will also be open to the petitioners to take up all contentions which are taken in these petitions for justifying their case with respect to the properties which are shown to be in excess before respondent No. 1.

12. In the result, all these petitions are accepted. The common order passed by the Competent Authority at Ahmedabad (respondent No. 1 herein) at Annexure M to each petition as affirmed in appeal by the common appellate order passed by the Urban Land Tribunal at Ahmedabad at Annexure N to each petition is quashed and set aside. The matter is remanded to respondent No.1 for restoration of the proceedings to file and for his fresh decision according to law in the light of this judgment of mine. Rule issued on each petition is accordingly made absolute to the aforesaid extent with no order as to costs.
